

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICHARD KIRBY,

Plaintiff,

v.

No. CIV 08-659 JCH/LFG

ROBERT EZELL, SHANNON
McREYNOLDS, and MAJOR HORTON,

Defendants.

**ORDER GRANTING DEFENDANT'S MOTION FOR
PROTECTIVE ORDER AND STAY OF DISCOVERY**

THIS MATTER comes before the Court on the Motion for Protective Order and Stay of Discovery [Doc. 57], filed by Defendant Shannon McReynolds (“McReynolds”) on August 28, 2009. No response is necessary.

This is a *pro se* action brought by inmate Kirby against various defendants, alleging violations of his civil rights while incarcerated. Such actions are excluded from the usual pretrial case management procedures, including discovery between parties. D.N.M.LR-Civ. 16.3. At present, each of the Defendants has filed a separate Martinez report as directed by the Court, and Kirby filed a Response thereto entitled “Second Request for Extension of Time to File a Response to the Martinez Report.” [Doc. 53].

In this “Second Request,” Kirby asks for an additional 90 days to respond to Defendants’ Martinez reports but states that, if the “Second Request,” which contains certain factual information, is sufficient to allow evaluation of the claims, the Court may deem that document as his Response.

[Id., at 17]. Kirby also states in the “Second Request” that he submitted discovery requests “to the Affiants and to co-workers of the Defendants with direct knowledge.” [Id., at 3]. Kirby did not request and has not received permission to engage in discovery.

McReynolds states in his Motion for Protective Order that Kirby served interrogatories, requests for production of documents and/or requests for admissions on Valerie Rogers, NMCD Contract Monitor at the Lea County Correctional Facility (“LCCF”) on August 19, 2009. Ms. Rogers is not a party to this action. McReynolds attached to his motion a copy of the discovery requests, which shows that Kirby served the requests on McReynolds and on co-defendants Robert Ezell and Major Horton. [Doc. 57, Ex. A].

Kirby’s request for a second extension is under advisement. Once the Court completes its review of the Martinez Reports and other material of record, the parties will be advised whether further factual development is necessary. In the meantime, no party may serve discovery requests on any other party or on non-parties.

IT IS THEREFORE ORDERED that Defendant Shannon McReynolds’s Motion for Protective Order and Stay of Discovery [Doc. 57] is granted.

IT IS FURTHER ORDERED that no further discovery requests shall be served by any party in this action without an order of the Court permitting discovery. Any discovery requests already served in this case need not be answered.



Lorenzo F. Garcia
Chief United States Magistrate Judge